

**Robyn A. Crittenden**  
State Revenue Commissioner



**Frank M. O'Connell**  
Deputy State Revenue Commissioner

**Georgia Department of Revenue**  
1800 Century Boulevard, NE | Atlanta, Georgia 30345

**NOTICE IT-2022-2**

**RE: Proposal to amend Rule 560-7-8-.64 Railroad Track Maintenance Tax Credit.**

**TO ALL INTERESTED PERSONS AND PARTIES:**

In compliance with O.C.G.A. § 50-13-4, the Georgia Department of Revenue gives notice that it proposes to amend Rule 560-7-8-.64.

Attached to this notice are an exact copy and synopsis of the proposed Rule. The proposed Rule is being amended under the authority of O.C.G.A. §§ 48-2-12 and 48-7-40.34.

The Department of Revenue will consider the Amendment of the above Rule at a regulation hearing held at 1800 Century Boulevard, NE, Atlanta, GA 30345, Room L300, on June 10, 2022, at 11:00 a.m. All attendees will be required to sign in upon arrival.

The Department must receive all comments regarding the above-referenced Rule from interested persons and parties no later than 11:00 a.m. on June 10, 2022. Electronic comments must be sent to [regcomments@dor.ga.gov](mailto:regcomments@dor.ga.gov). Facsimile comments must be sent to (770) 342-3157. **Please reference "Notice Number IT-2022-2" on all comments.**

Dated: 04/29/2022

  
Robyn A. Crittenden  
State Revenue Commissioner

## **SYNOPSIS**

### **GEORGIA DEPARTMENT OF REVENUE INCOME TAX DIVISION**

#### **CHAPTER 560-7-8 RETURNS AND COLLECTIONS**

##### **560-7-8-.64 Railroad Track Maintenance Tax Credit.**

The purpose of proposed Rule 560-7-8-.64 is to bring the rule into conformity with current Georgia law. This credit was amended by Senate Bill 6 from the 2021 Session of the General Assembly, which changed the sunset date for the credit from January 1, 2024 to January 1, 2027. Specific changes are denoted in the attached Rule.

**RULES  
OF  
DEPARTMENT OF REVENUE  
INCOME TAX DIVISION**

**CHAPTER 560-7-8  
RETURNS AND COLLECTIONS**

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**560-7-8-.64 Railroad Track Maintenance Tax Credit.**

**560-7-8-.64 Railroad Track Maintenance Tax Credit.**

(1) **Purpose.** This regulation provides guidance concerning the implementation and administration of the income tax credit under O.C.G.A. § 48-7-40.34.

(2) **Definitions.**

(a) The term "Class III railroad" means a rail carrier classified as a Class III railroad by the United States Surface Transportation Board in accordance with Section 1-1 of 49 C.F.R. 1201, as it existed on January 1, 2018.

(b) The term "qualified railroad track maintenance expenditures" means gross expenditures for maintaining railroad track located in Georgia, including roadbed, bridges, and related track structures located in Georgia, owned or leased as of January 1, 2018, by a Class III railroad. Such term shall also include improvement of such railroad track, roadbed, bridges, and related track structures.

34  
35       (3) **Credit Amount.** For tax years beginning on or after Janu-  
36 ary 1, 2019, and ending on or before December 31, ~~2023~~2026, a  
37 Class III railroad shall be allowed a tax credit in the amount of 50  
38 percent of the qualified railroad track maintenance expenditures  
39 paid or incurred by such Class III railroad during the taxable year.

40  
41       (4) **Credit Amount Limitation.** The credit amount allowed  
42 under paragraph (3) of this regulation shall be further limited for  
43 each Class III railroad and shall not exceed \$3,500 multiplied by  
44 each mile of railroad track owned or leased in Georgia as of the  
45 close of the taxable year by such Class III railroad. Double track is  
46 treated as multiple lines of railroad track, rather than as a single  
47 line of railroad track. Thus, one mile of single track is one mile,  
48 but one mile of double track is two miles.

49  
50       (5) **Per Mile Limitation.** The credit allowed under O.C.G.A.  
51 § 48-7-40.34 and this regulation shall only be allowed once for  
52 each mile of railroad track in each taxable year.

53  
54       (6) **Reduction of basis.** If a credit is allowed under O.C.G.A.  
55 § 48-7-40.34 and this regulation with respect to any railroad track,  
56 the basis of such railroad track shall be reduced by the amount of  
57 the credit allowed. Such reduction shall be treated in the same  
58 manner as provided by Section 45G of the Internal Revenue Code  
59 of 1986.

60  
61       (7) **Preapproval.** A taxpayer seeking preapproval to claim the  
62 tax credit under O.C.G.A. § 48-7-40.34 must electronically submit  
63 Form IT-RTM-AP through the Georgia Tax Center along with  
64 documentation that substantiates the miles of railroad track owned  
65 or leased by the taxpayer in Georgia, and any other information  
66 that the Commissioner may request. The Department will not pre-

67 approve any taxpayer where Form IT-RTM-AP is submitted or  
68 filed in any other manner. If the taxpayer is a disregarded entity  
69 then Form IT-RTM-AP should be electronically submitted in the  
70 name of the owner of the disregarded entity. If Form IT-RTM-AP  
71 is submitted before the credit is earned or before the end of the  
72 taxpayer's tax year, the taxpayer must estimate their credit  
73 amounts on Form IT-RTM-AP. The amount of tax credit claimed  
74 on the taxpayer's applicable Georgia income tax return must be  
75 based on the actual amount of qualified railroad track maintenance  
76 expenditures. If the taxpayer is preapproved for an amount that  
77 exceeds the amount that is calculated using the actual amount of  
78 the qualified railroad track maintenance expenditures when the re-  
79 turn is filed, the excess preapproved amount cannot be claimed by  
80 the taxpayer, nor shall the excess preapproved amount be claimed  
81 by, reallocated to, assigned to, or transferred or sold to any other  
82 taxpayer.

83  
84 (a) Notification. The Department will notify each taxpayer of  
85 the tax credits preapproved to such taxpayer, within thirty (30)  
86 days from the date the completed Form IT-RTM-AP was submit-  
87 ted through the Georgia Tax Center.

88  
89 **(8) Claiming the Credit.** To claim the railroad track mainte-  
90 nance tax credit, the taxpayer must submit Form IT-RTM, and any  
91 other information that the Commissioner may request, with the  
92 taxpayer's Georgia income tax return each year the tax credit is  
93 claimed. A software program's Form IT-RTM that is electronical-  
94 ly filed with the Georgia income tax return in the manner specified  
95 by the Department satisfies this requirement.

96  
97 **(9) No Carry forward.** No unused railroad track maintenance  
98 tax credit shall be allowed the taxpayer or the transferee against  
99 succeeding years' tax liability.

100  
101       (10) **Pass-Through Entities.** When the taxpayer is a pass-  
102 through entity, and has no income tax liability of its own, the tax  
103 credits will pass to its members, shareholders, or partners based on  
104 the year ending profit/loss percentage and the limitations of this  
105 regulation. The credit forms will initially be filed with the tax re-  
106 turn of the taxpayer to establish the amount of the credit available  
107 for pass through. The credit will then pass through to its sharehold-  
108 ers, members, or partners to be applied against the tax liability on  
109 their income tax returns. The credits are available for use as a  
110 credit by the shareholders, members, or partners for their tax year  
111 in which the income tax year of the pass-through entity ends. For  
112 example: A partnership earns the credit for its tax year ending Jan-  
113 uary 31, 2020. The partnership passes the credit to a calendar year  
114 partner. The credit is available for use by the individual partner  
115 beginning with the calendar 2020 tax year.

116  
117       (11) **Selling or Transferring the Railroad Track Mainte-**  
118 **nance Tax Credit.** The taxpayer may sell or transfer in whole or  
119 in part any railroad track maintenance tax credit previously  
120 claimed but not used by such taxpayer against its income tax, to  
121 another Georgia taxpayer subject to the following conditions:

122  
123       (a) The taxpayer may only make a one-time sale or transfer of  
124 railroad track maintenance tax credits earned in each taxable year.  
125 However, the sale or transfer may involve more than one transfer-  
126 ee. For example, taxpayer 1 earns and claims \$100,000 credit in  
127 year 1. In year 2 they sell \$75,000 of the credit to taxpayer 2. In  
128 year 3, they are allowed to sell the remaining \$25,000 of the credit  
129 to taxpayer 3. However, both taxpayer 2 and taxpayer 3 are not  
130 allowed to resell the credit since the credit can only be sold one-  
131 time.

132

133 (b) The railroad track maintenance tax credit may be trans-  
134 ferred before the tax return is filed by the taxpayer provided the  
135 taxpayer has received preapproval from the Department as provid-  
136 ed in paragraph (7) of this regulation.

137  
138 (c) The taxpayer must file Form IT-TRANS "Notice of Tax  
139 Credit Transfer" with the Department of Revenue within 30 days  
140 of the transfer or sale of the railroad track maintenance tax credit.  
141 Form IT-TRANS must be submitted electronically to the Depart-  
142 ment of Revenue through the Georgia Tax Center or alternatively  
143 as provided in subparagraph (11)(c)1. of this regulation. With re-  
144 spect to such taxpayer, the Department of Revenue will not process  
145 any Form IT-TRANS submitted or filed in any other manner. If  
146 the taxpayer is a disregarded entity then Form IT-TRANS should  
147 be filed in the name of the owner of the disregarded entity.

148  
149 1. The web-based portal on the Georgia Tax Center. The tax-  
150 payer may provide selective information to a representative for the  
151 purpose of allowing the representative to submit Form IT-TRANS  
152 on their behalf on the Georgia Tax Center outside of a login. The  
153 provision of such information shall authorize the representative to  
154 submit such Form IT-TRANS. The representative must provide all  
155 information required by the web-based portal on the Georgia Tax  
156 Center to submit Form IT-TRANS.

157  
158 (d) The taxpayer must provide all required railroad track  
159 maintenance tax credit detail and transfer information to the De-  
160 partment of Revenue. Failure to do so will result in the railroad  
161 track maintenance tax credit being disallowed until the taxpayer  
162 complies with such requirements.

163  
164 (e) The carry forward period of the railroad track maintenance  
165 tax credit for the transferee will be the same as it was for the tax-

166 payer. No unused railroad track maintenance tax credit shall be  
167 allowed to be carried forward.

168  
169 1. Example. Taxpayer sells the railroad track maintenance tax  
170 credit on June 15, 2020. This credit is for qualified railroad track  
171 maintenance expenditures preapproved by the Department for  
172 2019, paid or incurred in 2019 and claimed by the taxpayer on  
173 their 2019 income tax return. The transferee is a calendar year  
174 taxpayer. The credit may be claimed by the transferee on the cal-  
175 endar 2019 tax year return. The credit cannot be carried forward  
176 by the taxpayer or the transferee. The credit can only be utilized in  
177 tax year 2019.

178  
179 (f) A transferee shall only have such rights to claim and use  
180 the railroad track maintenance tax credit that were available to the  
181 taxpayer at the time of the transfer. Thus, a transferee shall not  
182 have the right to subsequently transfer such credit since that right  
183 has been utilized by the transferor.

184  
185 (g) In the event of recapture, reduction, disallowance, or other  
186 failure related to the railroad track maintenance tax credit, the De-  
187 partment may pursue the taxpayer or the transferee.

188  
189 **(12) How to Sell or Transfer the Railroad Track Mainte-**  
190 **nance Tax Credit.** The taxpayer may sell or transfer the railroad  
191 track maintenance tax credit directly to a Georgia taxpayer (or  
192 multiple Georgia taxpayers as provided in subparagraph (11)(a) of  
193 this regulation). A pass-through entity may make an election to  
194 sell the railroad track maintenance tax credit preapproved in a tax-  
195 able year at the entity level. If the pass-through entity makes the  
196 election to sell the railroad track maintenance tax credit at the enti-  
197 ty level, the credit does not pass through to the shareholders, mem-  
198 bers, or partners. In all cases, the effect of the sale of the credit on



199 the income of the seller and buyer of the credit will be the same as  
200 provided in the Internal Revenue Code.

201

202 (a) Pass-Through Entity. The taxpayer may be structured as a  
203 pass-through entity. If a pass-through entity does not make the  
204 election to sell or transfer the tax credit at the entity level as pro-  
205 vided in paragraph (12) of this regulation, the tax credit will pass  
206 through to the shareholders, partners, or members of the entity  
207 based on their year ending profit/loss percentage. The sharehold-  
208 ers, members, or partners may then sell their respective railroad  
209 track maintenance tax credit to a Georgia taxpayer.

210

211 (b) Transferee Pass-Through Entity. The taxpayer or its  
212 shareholders, members, or partners, may sell or transfer the tax  
213 credit to a pass-through entity. If the pass-through entity has no  
214 income tax liability of its own, the pass-through entity may then  
215 pass the credit through to its shareholders, members, or partners  
216 based on the pass-through entity's year ending profit/loss percent-  
217 age for the year. For example, if a calendar year partnership is  
218 buying the credit preapproved by the Department for 2019, then all  
219 of the partners receiving the credit must have been a partner in the  
220 partnership no later than the end of the 2019 tax year of the part-  
221 nership. Only partners who have a profit/loss percentage as of the  
222 end of the applicable tax year may receive their respective amount  
223 of the railroad track maintenance tax credit. The credits are avail-  
224 able for use as a credit by the shareholders, members, or partners  
225 for their tax year in which the income tax year of the pass-through  
226 entity ends. For example, a taxpayer received preapproval from  
227 the Department for 2019, incurred qualified railroad track mainte-  
228 nance expenditures in 2019, and sells the credit to a pass-through  
229 entity. The pass-through entity is entitled to use the credits on its  
230 calendar year 2019 tax return. The pass-through entity has two  
231 partners. The first partner is a calendar year partner. This credit

can only be utilized on the calendar tax year 2019 return and cannot be carried forward by the partner. The second partner is a corporation with fiscal year ending June 30, 2020. This credit can only be utilized on the fiscal year ending June 30, 2020 return and cannot be carried forward by the partner.

(c) The credits are available for use by the transferee, provided the time has not expired for filing a claim for refund of a tax or fee erroneously or illegally assessed and collected under O.C.G.A. § 48-2-35 in the transferee's tax year in which the income tax year of the taxpayer which claims the railroad track maintenance tax credit associated with the credit being sold, ends.

1. Example. Taxpayer sells the railroad track maintenance tax credit on October 15, 2019. This credit is for qualified railroad track maintenance expenditures preapproved by the Department for 2019, incurred in 2019 and claimed by the taxpayer on their 2019 income tax return. The transferee is a calendar year taxpayer. The credit may be claimed by the transferee on the calendar 2019 tax year return. This credit cannot be carried forward by the taxpayer or the transferee. The credit can only be utilized in tax year 2019 but can be claimed on an amended tax year 2019 return within the time period provided in subparagraph (c) of this paragraph.

(13) **Report.** On or before September 1, 2020, 2021, 2022, 2023, ~~and 2024, 2025, 2026, and 2027~~ the Department shall issue a report to the chairpersons of the Senate Finance Committee and the House Committee on Ways and Means, which shall include the following statistics for the preceding taxable year:

(a) The total number of taxpayers that claimed a credit; and

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264 (b) The number and total value of all credits earned and all  
265 credits applied during such tax year.

266  
267 (14) **Sunset Date.** O.C.G.A. § 48-7-40.34, the railroad track  
268 maintenance tax credit, shall be repealed on January 1, ~~2024~~2027.

269  
270 (15) **Effective Date.** This regulation shall be applicable to  
271 taxable years beginning on or after January 1, 2019.

272  
273 Authority: O.C.G.A. §§ 48-2-12 and 48-7-40.34.